

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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USA BASEBALL, THE NATIONAL HIGH
SCHOOL BASEBALL COACHES ASSOCIATION,
DR. PETER BERG, JUAN HERNANDEZ, DENNIS
CANALE, MEL ZITTER, MICHAEL CRUZ, TITO
NAVARRO, JOHN TORRES, EASTON SPORTS,
INC., WILSON SPORTING GOODS CO.,
RAWLINGS SPORTING GOODS COMPANY, and
HILLERICH & BRADSBY CO.,

**DECLARATION
OF LAURA POPA**

No. 07 CV 3605 (JGK) (DFE)

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

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Laura J. Popa declares, under the penalties of perjury, as follows:

1. I am the Deputy Director of the Human Services Division, which is within the Legislative Division of the New York City Council (the "Council"). In that position, I draft and supervise the drafting of proposed legislation to be considered by a number of Council Committees. One such committee is the Youth Services Committee, which considered and recommended to the full Council, Int. No. 341-A, the bill that, upon its enactment, became Local Law 20 of 2007 ("Local Law 20"). (Declaration of Jerald Horowitz, dated June 19, 2007, Ex. D1.)¹

2. This declaration provides an overview of the legislative record for Local Law 20 and other public documents containing information that supports Local Law 20.

¹ All exhibits to the Horowitz Declaration are referred to in this document as "Ex. D__".

Local Law 20 of 2007

3. The declaration of legislative findings and intent for Local Law 20 states that “[t]he Council hereby finds that the use of non-wood bats poses an unacceptable risk of injury to children, particularly those who play competitive high school baseball.” (Ex. D1.)

4. Local Law 20 mandates that “[o]nly wood bats shall be used in any competitive baseball game in which high school age children are participants and which involves the participation and/or sponsorship of a school.” It defines wood bats to mean “any baseball bat constructed exclusively of wood or any wood laminated or wood composite bat, which is approved by major league baseball [“MLB”], pursuant to such organization’s official rules, for major league or minor league play.” (Ex. D1.)

5. Local Law 20 further restricts bats for high school play that may be approved by MLB, by excluding for use any bats “made in whole or in part of metal, including, but not limited to, aluminum, magnesium, scandium, titanium or any other alloy compound.” (Ex. D1.)

6. The effective date of Local Law 20 is September 1, 2007. (Ex. D1.)

Legislative History

7. The Council conducted a lengthy review of the use of non-wood bats by minors in competitive baseball. The Council’s consideration of this issue included three public hearings at which testimony was received, a review of extensive testimony and documentation, and numerous meetings and discussions with interested parties, including certain plaintiffs. An overview of the many issues that the Council considered is set forth in a Report of the Committee on Youth Services, dated April 18, 2007 (the “Committee Report”). (Ex. D1.)

8. In 2001, Council Member Kenneth Fisher introduced Int. No. 949, a bill that proposed to restrict the use of non-wood bats by minors in competitive baseball games. In 2002, Council Member James Oddo introduced Int. No. 100, a bill that proposed to restrict the use of non-wood bats by minors in competitive baseball games. The Youth Services Committee held a public hearing on Int. No. 100 on September 27, 2002.

9. In 2004, Council Member James Oddo introduced Int. No. 273, a bill that proposed to restrict the use of non-wood bats by high school age children in competitive baseball games.

10. In 2006, Council Member James Oddo introduced Int. No. 341, the bill that as amended became Local Law 20. The Youth Services Committee held public hearings on Int. No. 341-A on October 23, 2006 and March 12, 2007. On March 12, 2007, the Youth Services Committee voted to recommend Int. No. 341-A to the full Council. (See Ex. D2.)

11. On March 14, 2007, the full Council, by a vote of 40 to 6, adopted Int. No. 341-A. On April 4, 2007, the Mayor of the City of New York (the "Mayor") vetoed Int. No. 341-A. On April 18, 2007, the Youth Services Committee held an additional public hearing to override the mayoral veto. On April 23, 2007, the full Council overrode the Mayor's veto by a vote of 41 to 4 and thereby enacted Local Law 20. (See Ex. D2.)

12. As discussed more fully below, at the hearings held by the Youth Services Committee, the Council heard testimony from parents, coaches and players that the use of high-performing non-wood bats results in conditions under which players are more vulnerable to injury, and has a deleterious effect on both the traditions and integrity of the game, as well as player development.

Concerns about High School and College Bat Standards

13. Currently, baseball players in high-school sponsored leagues in New York City use bats that meet standards adopted by the National Federation of High Schools (“NFHS”), which has in turn adopted the same standards established by the National Collegiate Athletic Association (“NCAA”). (See Darby Decl. ¶ 4.)

14. As reflected in the Committee Report, the Council reviewed the NCAA standard and the NCAA’s decision-making process prior to the adoption of its standard. (Ex. D1 at 3-9.)

15. The Council reviewed documents and concluded that the NCAA and the NFHS bat performance standards did not satisfactorily address the risk of injury to players and integrity of the game issues. (See Ex. D1 at 3-9; Ex. D6; Ex. D7.)

16. The legislative record further reveals that the current standards for non-wood bat performance adopted by the NCAA and later embraced by the NFHS have been questioned, in part because they were closely associated with a settlement agreement in a \$267 million dollar restraint of trade lawsuit filed by plaintiff Easton against the NCAA. (See Ex. D1 at 3-10; Ex. D8 at 80, 118-19; see generally Ex. D9.)

17. Furthermore, as discussed in the Committee Report, the legislative record shows that current NCAA and NFHS bat standards were significantly “watered down” from recommendations originally made by the NCAA’s Baseball Rules Committee, the NCAA’s Baseball Research Panel, the NCAA’s Executive Committee, and the NFHS Rules Committee. (Ex. D1 at 3-10.)

18. In particular, as discussed in the Committee Report, the NCAA initially questioned whether the current bat exit speed standard of 97 m.p.h. (the so-called “BESR”

standard) provided players sufficient response time to react to a batted ball. (Ex. D1 at 3-10; See Ex. D6.) For example, NCAA memoranda state: “Most of the experts providing information to the Baseball Rules Committee believe that a collegiate pitcher needs approximately .4 seconds to react and move to avoid being struck,” and “[t]he ball exit velocity that matches this reaction time is 93 miles per hour.” (Ex. D6.)

19. The Council reviewed documents indicating that non-wood bats that meet current NCAA and NFHS standards can outperform wood bats in the field. Such documents include: Robert K. Adair, Ph.D., *The Physics of Baseball*, 3rd ed. (chapter entitled “Aberrant Bats: Aluminum Bats”) (Ex. D10); Alan M. Nathan, *Some Thoughts on Wood vs. Aluminum Bats*, Submitted to MIAA, January 10, 2003 (Ex. D11); Alan M. Nathan, *Wood vs. Aluminum Bats and the NCAA Test Protocol*, Revised April 15, 2007 (Ex. D12); Daniel A. Russell, Ph.D., *Why Aluminum Bats Can Perform Better Than Wood Bats*, Revised October 18, 2006 (Ex. D13); Sherwood et al., *Characterizing the Performance of Baseball Bats Using Experimental and Finite Element Methods* (2000) (Ex. D14); and Bill Thurston, *Aluminum Bat Performance vs. Wood Bat Performance* (Nov. 2002) (Ex. D22.)

20. The Council reviewed documents indicating it is generally accepted that, because wood bats are made from a piece of solid wood, “there is little a bat manufacturer can do to engineer better wood bats.” (Ex. D14 at 2), whereas, the use of metal alloys and advanced technology allows bat manufacturers to manipulate the performance of non-wood bats. (See Ex. D10; Ex. D13; Ex. D14.)

21. In particular, the Council reviewed documents indicating that the manufacturing of non-wood bats can be manipulated to increase performance in at least three ways. First, as discussed in the Committee Report, the weight can be distributed closer to the

handle in non-wood bats, resulting in a lower “moment of inertia” (“MOI”) that makes such bats easier and quicker to swing. (Ex. D1 at 3-10; See Ex. D11; Ex. D12; Ex. D13; Ex. D14; Ex. D22. (Bill Thurston, *Aluminum Bat Performance vs. Wood Bat Performance* (Nov. 2002)). As one author has stated, the lower MOI “affects performance because higher bat speed is directly related to higher batted ball speed. The faster a player can swing a bat, the higher the final speed of the ball.” (Ex. D13 at 4.)

22. Further, as the Committee Report indicates, there is concern that the NCAA’s restriction on MOI is inadequate, since the MOI limit for a non-wood bat is not similar to the MOI limit for a wood bat. (Ex. D1 at 7-8.) Specifically, it appears that the NCAA MOI requirements “grandfathered in” currently certified bats based on bats acceptable in 2000 – before there were any MOI standards. (Ex. D1 at 7; See Ex. D11 at 2; Ex. D12 at 2.) (“[e]ven with [the NCAA] restriction, aluminum bats outperform wood bats in the field”).

23. In sum, the Council was concerned that the current NCAA bat standards do not adequately take MOI into account, and that non-wood bats hit balls at higher exit speeds in the field. (See Ex. D1.)

24. Second, the Council reviewed documents indicating that non-wood bats have what is referred to as a “trampoline effect.” Documents reviewed note that when a ball hits a non-wood bat, the barrel compresses like a spring upon impact. (See Ex. D13 at 5.) Documents also indicate that contrary to what occurs with a wood bat, this spring means there is less deformation of the ball, resulting in more energy being briefly stored in the metal and then returned to the ball. (See Ex. D10 at 134-135; Ex. D13 at 5; Ex. D14 at 3.)

25. Third, the Council reviewed documents indicating that non-wood bats have a larger effective hitting area or “sweet spot,” which enables such bats to hit the ball better

and more frequently. (Ex. D22.) (Matt Kelly and Paul Pederson, “Hardball-Hardbat: A Call for Change from Aluminum to Wooden Baseball Bats in the NCAA,” The Sports Journal (submitted December 15, 2000; Bill Thurston, *Aluminum Bat Performance vs. Wood Bat Performance* (Nov. 2002))

Testimony and Documents About Injuries

26. The Council received testimony from parents that the use of high-performing non-wood bats increases the risk of injury to players. For example, a mother whose son was killed by a ball batted off a non-wood bat testified that “[a]nd as far as reaction time, if it was going to be there, Brandon would have had it. Brandon didn’t have a chance.” (Ex. D16 at 109-111.) Likewise, a father whose son was seriously injured testified that, “On the fourth batter, he was struck by a line drive that I just barely seen (sic) the ball make contact with the bat. . . . He had no time to react whatsoever.” (Ex. D16 at 179-181; see also Ex. D15 at 126-137; Ex. D17 at 20-25.)

27. The Council also received testimony and reviewed documents from coaches and players indicating that use of high-performing non-wood bats results in conditions under which players are more vulnerable to injury. For example, former Mets pitcher John Franco testified that he throws batting practices for some high school teams and “while the ball is just getting out of my hand, it’s already hitting the net, and I don’t even see it coming at me. It’s dangerous. It’s very, very dangerous.” (Ex. D17 at 4-8.) Likewise, a well-regarded high school baseball coach stated that he has seen “several scary injuries over the past several years,” and suggested the possibility of erecting a protective screen in front of pitchers “if we continue to use these bats[,] in order to protect them.” (Ex. D18; see also Ex. D19.)

Tradition, Integrity and Player Development

28. The legislative record reveals concern over the changing nature of a game played with high-performance non-wood bats and a desire to adhere to the traditions and integrity of the game and promote player development. See Ex. D1 at 11-13; Ex. D16 at 11-116; Ex. D20; D22 (Matt Kelly and Paul Pederson, “Hardball-Hardbat: A Call for Change from Aluminum to Wooden Baseball Bats in the NCAA,” The Sport Journal (Submitted December 15, 2002)). For example, one coach testified that “the game is a much more beautiful game played with wood” (Ex. D16 at 284-287), and another coach and scout stated that “[t]he integrity of the game has also been overshadowed by the offensive production.” (Ex. D20.)

29. The legislative record also reflects that only wood bats are used in professional baseball (See Ex. D21.), and playing with wood bats is tied to a player’s growth and development. (See Ex. D1 at 11-13.) For example, one journal article states as follows: “not only are aluminum bats lethal against defensive baseball players, they are also distorting the development of college pitchers who have to use drastically different strategies when pitching against players using aluminum bats than they would if they were pitching against players using wooden bats. This is creating development problems for pitchers who are trying to make the transition from collegiate-level pitching to professional-level pitching where the only bats allowed are wooden. There are also batter-development issues at stake.” (Ex. D22 (Matt Kelly and Paul Pederson, “Hardball-Hardbat: A Call for Change from Aluminum to Wooden Baseball Bats in the NCAA,” The Sport Journal (submitted December 15, 2000) at 3)). Further, the record reveals that a significant number of college coaches were happy with North Dakota’s decision to switch to wood for high school children, because it “helps them to recruit quality players.” (Ex. D20.)

30. The Council reviewed documents indicating that scouts understand the differences in statistics between players using wood and non-wood bats, and that scouts frequent all-wood collegiate league games in order to observe a player's batting and pitching talent with wood. (See Ex. 1 at 11-13; Ex. D22. (David Albright, "Lowell Park a Virtual Baseball 'Mecca,' Says ESPN, (March 9, 2007), and Letter from Joseph Litterio, head baseball coach at Wagner College, dated October 20, 2006))

31. The Council also heard testimony that a number of teams that play with non-wood bats practice with wood to improve their baseball skills. For example, Ed Blankmeyer, the head baseball coach at St. John's University, while testifying in opposition to Local Law 20, stated that "all coaches like to train with wood bats." (Ex. D16 at 125-127.) Further Steve Mandl, head coach at George Washington High School, while testifying in opposition to Local Law 20, stated that he practices with wood "because on the next level in pro ball, that's what they're going to use." (Ex. D17 at 14-15.)

Recent Switch to Wood-Only Policies

32. The legislative record shows there has been a recent movement of leagues to switch to a wood-only policy in order to address player safety, tradition and integrity issues, and player development. (See Ex. D1 at 13-14; Ex. D23.) For example, a letter from Donald Buckley, President, Nassau Suffolk County Catholic High School Athletic Association, states that "We are very proud of our decision and confident that in the long run, it is in the best interest of the children and baseball to continue using the wood bats." Ex. D23. (Letter from Donald Buckley, President, Nassau Suffolk Catholic High School Athletic Association, dated November 30, 2006). Similarly, a local park league recently switched to wood, citing safety as

their primary concern. See Ex. D23. (Prospect Park Baseball Association, “Wood Bat Policy,” (November 2006)

33. The legislative record further indicates that wood composite bats are considered to be like wood bats, and are viewed as durable and cost-effective for leagues with wood-only policies. (See Ex. D16 at 111-16; Ex. D21; Ex. D24.) The representative of one league that switched to wood and wood composite bats stated that wood composite bats “give us the durability greater than aluminum at 1/3 the cost.” (Ex. D24 (Statement of Joel Swanson.) Similarly, Frank Menechino, former Yankee, testified that, in his experience, wood composite bats perform like wood bats. (See Ex. D16 at 111-16.)

34. Furthermore, the Council reviewed laboratory and field tests indicating that wood composite bats had similar performance to wood bats but were more durable, while non-wood bats significantly outperformed both wood and wood composite bats. (Ex. D25.)

Major League Baseball (MLB) Standards

35. The Council reviewed documentation indicating that MLB has a strict wood-only policy and that it is in the interests of MLB to protect the safety of its players and the traditions and integrity of the game of baseball. (See Ex. D21; Ex. 14 at 4 (“The dimensions of the baseball field were based on human speed and batters hitting with wood bats. Any increase in exit velocity over that of wood changes the game. Major League Baseball recognizes this fact and will never allow the use of high-performance metal bats in its games.”))

36. The Council reviewed documents indicating that MLB permits, in certain Minor League play, the use of durable wood composite bats that meet strict standards developed by MLB. (See Ex. D1 at 10-11; Ex. D21.) The Council reviewed documents indicating that the MLB bat testing protocol for wood composite bats includes additional tests and is conducted in a

different manner than the NCAA protocol. (See Ex. D21.) More specifically, the MLB protocol utilizes direct comparisons of wood to wood composite bats to ensure that wood composite bats have physical properties similar to solid wood bats, including weight, barrel diameter, length, moment of inertia, modal properties, strength and stiffness. (See Ex. D21.) The Council reviewed documents indicating that the MLB protocol also includes direct wood to wood composite comparisons for batted ball performance tests, modal tests, static-strength and flexural stiffness tests, and high-speed durability tests, in order to ensure that wood composite bats perform like wood bats. (See Ex. D21.)

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 18, 2007



LAURA POPA

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<p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p>	<p>USA BASEBALL, THE NATIONAL HIGH SCHOOL BASEBALL COACHES ASSOCIATION, DR. PETER BERG, JUAN HERNANDEZ, DENNIS CANALE, MEL ZITTER, MICHAEL CRUZ, TITO NAVARRO, JOHN TORRES, EASTON SPORTS, INC., WILSON SPORTING GOODS CO., RAWLINGS SPORTING GOODS COMPANY, and ILLERICH & BRADSBY CO.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">-against-</p> <p>THE CITY OF NEW YORK,</p> <p style="text-align: right;">Defendant</p>
<p>DECLARATION OF LAURA POPA</p>	<p>MICHAEL A. CARDOZO <i>Corporation Counsel of the City of New York Attorney for Defendant City of New York Address for Service of Papers 100 Church Street, Room 5-189 New York, N.Y. 10007</i></p> <p><i>Of Counsel: Jerald Horowitz Tel: (212) 442-05890 NYCLIS No.2007-015516</i></p>